IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 236 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJIV K. BADLANI

Versus

PAGE-HALTON BRANDS PVT. LTD.

Appearance:

MR AR GUPTA for Petitioner No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 22/03/2002

ORAL JUDGEMENT

1 The petitioner is one of the Directors of the Company and has preferred this petition seeking direction to wind up the company named "M/s.Page-Halton Brands Pvt.Ltd." under Section 433(c) of the Indian Companies Act,1956 (for short 'Company').

2 The petition was admitted on 18/09/2000 and publication of advertisement in "Indian Express" (English Daily, Ahmedabad Edition) and "Sambhav" (Gujarati Daily, Ahmedabad Edition) as well as the Gujarat Government Gazette was directed to be carried out. Accordingly, necessary advertisements have been issued and the affidavit of publication is available on record.

3 The Company was incorporated on 17/07/1984 as a Private Limited Company Limited by shares. The share capital of the Company was Rs.10,000/- divided into 1000 shares of Rs.10/- each but the issued, subscribed and paid up share capital was only Rs.20/- as only 2 shares of Rs.10/- each were allotted to the first two subscribers of whom one was the petitioner and the other was one Mr.Paresh J.Shah. That, both the petitioner and Mr.Paresh J.Shah were the first Directors of the Company but Mr.Paresh J.Shah did not participate in the activities of the Company nor did he take any interest in raising necessary finance for the purpose of commencing the business of the Company and hence the Company could not commence business for achieving the objects set out in the memorandum of association. The petitioning Director was also not in a position to raise necessary finance and commence and run the Company single handedly. From the accounts placed on record, it is apparent that on 31/3/1992 the total paid-up capital was Rs.20/- only and a loan of Rs.870/was given by the petitioner. Thus, the total funds available with the Company were to the tune of Rs.890/- only which were expended in preliminary expenses, resulting in non availability of any capital or liquidity with the Company. The same position was existing even on 31/3/2000.

4 In response to the public notice none has appeared to oppose the petition. Mr.A.R.Gupta, learned Advocate, appearing on behalf of the petitioner submitted that the only liability of the Company is to pay to the contributories amount of Rs.20/- towards the paid-up capital and an unsecured loan of Rs.870/- to the petitioner. That the substratum of the Company having been lost, neither the claim of the contributories or unsecured creditor can be met. Mr.Gupta also further submitted that the Company has no other liability, that there are no dues of any governmental authority, the company having not carried on any business. It was further submitted that there was no likelihood of the Company being in a position to commence any business and

hence the prayer for winding up the Company may be granted.

5 Section 433(c) of the Companies Act,1956 requires that if a Company does not commence its function within a year from its incorporation or suspends its business for a whole year it is liable to be wound up.

6 From the undisputed facts which have come on record it is apparent that the Company has not commenced any business for a period of more than 18 years from the date of its incorporation and taking into consideration the financial affairs as available on record there is no likelihood that the Company can even otherwise commence its activities. Therefore, this is a fit case where the Company requires to be wound up under the provisions of Section 433(c) of the Act.

7 The Company is accordingly ordered to be wound up. The Official Liquidator attached to this Court is appointed as Liquidator of the respondent Company. This petition stands allowed accordingly.

Sd/-
(D.A.Mehta, J.)
m.m.bhatt